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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 17-CR-0533-EMC
)	
Plaintiff,)	
)	
v.)	Motion to Exclude State Court Verdict
)	
JONATHAN JOSEPH NELSON et al,)	
)	
Defendants.)	

The Court should exclude evidence of Nelson’s state court acquittals because (1) the acquittals are not relevant, (2) any probative value “is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, [and] wasting time,” Fed. R. Evid. 403, and (3) evidence of the acquittals is inadmissible hearsay.

I. Background

In 2008, Nelson was charged with a number of offenses following his participation in the McNear’s assault. In 2010, he was convicted of battery, in violation of Cal. PC § 242. The jury found that the state had not proven that the battery was “committed for the benefit of, at the direction of, or in association with a criminal street gang,” pursuant to Cal. PC § 186.22. The jury also acquitted Nelson of

1 participation in a criminal street gang, in violation of Cal. PC § 186.22; assault with a deadly weapon, in
 2 violation of Cal. PC § 245(a) (1); and assault, in violation of Cal. PC § 240.

3 II. Argument

4 The state court acquittals should be excluded. “In federal criminal prosecutions, courts have
 5 consistently held that evidence of an acquittal is generally inadmissible.” *United States v. Young*, No.
 6 CR 10-00923 (C) SJO, 2013 WL 12222473, at *1 (C.D. Cal. Nov. 22, 2013). *See also Pico v. Woodford*,
 7 No. EDCV 06-00890-DSFMLG, 2008 WL 4811093, at *7 (C.D. Cal. Oct. 27, 2008) (“[F]ederal courts
 8 have uniformly concluded that evidence of a prior acquittal is neither a reliable indicator that the
 9 underlying conduct did not occur, nor a useful tool for the trier of fact.”).

10 First, “evidence of a prior acquittal is not relevant because it does not prove innocence but rather
 11 merely indicates that the prior prosecution failed to meet its burden of proving beyond a reasonable
 12 doubt at least one element of the crime.” *United States v. Kerley*, 643 F.2d 299, 300–01 (5th Cir. 1981).
 13 *See also United States v. Thomas*, 114 F.3d 228, 249 (D.C. Cir. 1997) (“[A] judgment of acquittal is not
 14 usually admissible to rebut inferences drawn from evidence that was admitted.”).

15 Second, any probative value is substantially outweighed by a danger of unfair prejudice.
 16 “Because the elements of the state . . . charge[s] [are] entirely different from the elements of the federal
 17 charges in this case, the probative value of evidence of [Nelson’s] acquittal” are “substantially
 18 outweighed by the danger of unfair prejudice, confusion of the issues and misleading the jury.” Take, for
 19 example, the gang enhancement specified in Cal. PC § 186.22. The elements of that offense require the
 20 prosecution to prove, among other things, that “at least two members of that same gang must have
 21 participated in committing the felony offense.” JUDICIAL COUNCIL OF CALIFORNIA CRIMINAL JURY
 22 INSTRUCTION (2021) 1400 (Cal. Pen. Code § 186.22). By contrast, the McNears assault remains relevant
 23 here even if the United States does not satisfy that requirement. *United States v. Garcia-Santana*, 774
 24 F.3d 528, 537 (9th Cir. 2014) (quotation omitted) (an overt act need only “manifest that the conspiracy
 25 is at work”).

26 Similarly, the state offense requires the prosecution to prove a “pattern of criminal gang
 27 activity,” which means that “[t]he crimes commonly benefitted a criminal street gang.” JUDICIAL
 28 COUNCIL OF CALIFORNIA CRIMINAL JURY INSTRUCTION (2021) 1400 (Cal. Pen. Code § 186.22). That is

1 also contrary to what the United States needs to prove here. *United States v. Marino*, 277 F.3d 11, 28
2 (1st Cir. 2002) (“It is unnecessary for the pattern of racketeering to have benefitted the enterprise in any
3 way.”).

4 In light of these differing standards, evidence of the state court acquittals would confuse the
5 issue, mislead the jury, and cause the United States unfair prejudice. Allowing evidence of the state
6 court acquittals would also lead to unnecessary delay and waste of time as the United States would need
7 to respond by explaining the difference between the cases and why Nelson’s prior acquittals have no
8 bearing on his federal charges.

9 Finally, the state court acquittals are also inadmissible hearsay. “Judgments of acquittal are
10 hearsay.” *United States v. Irvin*, 787 F.2d 1506, 1516–17 (11th Cir. 1986). “Unlike judgments of
11 conviction, which may be admitted under Rule 803(22) of the Federal Rules of Evidence for some
12 purposes, and used for impeachment under Rule 609, judgments of acquittal are not covered by an
13 exception to the rule against admission of hearsay.” *Id.* See also *United States v. Viserto*, 596 F.2d 531,
14 537 (2d Cir. 1979) (“The Federal Rules of Evidence except from the operation of the hearsay rule only
15 judgments of conviction, Rule 803(22), not judgments of acquittal.”); *United States v. Sutton*, 732 F.2d
16 1483, 1492 (10th Cir. 1984).

17 Against this backdrop, Nelson contends only that the acquittals have led to bias on the part of
18 Police Chief Savano. Such an argument is entirely speculative. To begin with, as Nelson acknowledged
19 during his cross-examination, Savano was not the investigating officer. Tr. 1549 (“I think the
20 investigating officer was Jason Lechleiter. Right?”). Savano was instead a percipient witness who shared
21 what he saw with the responding officers and then picked up surveillance video from McNears. Tr. 1539
22 – 1540. Moreover, when asked why he remembers the event, Savano did not say the event was
23 particularly significant to him or his police department: he testified that he remembered what happened
24 because “of the video and the supplemental report that [he] documented immediately following” the
25 assault. Tr. 1564.

26 To the extent that Nelson wanted to inquire into bias, he had many other mechanisms available.
27 He could have asked Savano, for example, about his perception of the Hells Angels; whether Savano
28 viewed the Hells Angels as a problem for the City of Petaluma; or whether Savano had worked on cases

1 against the Hells Angels before he became Police Chief. He did not, and his backdoor attempt to
2 introduce evidence of the state court acquittals should not be granted.

3 **III. Conclusion**

4 For the foregoing reasons, the United States requests that the Court exclude evidence of Nelson's
5 state court acquittals.

6
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Respectfully submitted,

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